cratic Party and had served as Ambassador to Ireland. He was the builder of the District of Columbia Stadium, as well as many other expensive Government buildings. Mr. McCloskey's testimony was vitally needed. He should have been asked to give his version of his meeting in Baker's Capitol office attended by, among others, Baker, Don B. Reynolds, Silver Spring, Md., insuranceman, and William McLeod, who at that time was clerk of the House District of Columbia Committee. McCloskey should have been asked why the performance bond on the construction of the stadium was handled by Don Reynolds when the firm which actually acted as agent was the same firm with which his son-in-law was associated. McCloskey should have been asked what he knew about Reynolds' kickback to Baker of $4,000. He should have been asked what conversation was had, if any, in his presence concerning all kickbacks. McCloskey should have been asked what he knew about Reynolds' payment of $1,500 to McLeod, whose committee handled the legislation for the District of Columbia Stadium. McCloskey should have been asked what dealings, if any, he had had with Baker or any other Senate employee or any Senator or former Senator in connection with any other Government construction contracts.

Mr. President, on page 88 of the same report, it states in part:

The request of the minority members for the testimony of McCloskey, which, under rule 19 (app. 1) should have been honored, was resisted and ultimately denied by the majority. The formal motion made by the minority to call McCloskey as a witness was voted down.

Mr. President, that proposal was voted down by 6 to 3.

We can rest assured that if we had to call Mr. McCloskey and had him on the stand, I would have asked him about every payment he made to the Reynolds Insurance Agency all through this period. It would either have brought to light the transactions brought out by the distinguished Senator from Delaware [Mr. WILLIAMS], or it would have amounted to dangerous concealment.

The hearings of February 17, 1964, when Mr. McLeod was on the witness stand, recite in part as follows:

Senator CANNON. You said that you were in the room when the bids were opened for the stadium.

Who was present at that time?

Mr. MCLEOD. Well, the law required certain people to be there. It required that the members of the Armory Board be there, and they were there. Floyd Akers was Chairman of the Board. Robert E. McLaughlin—

Incidentally, that name appeared in print today. We shall have more to say about that tomorrow.

Continuing to quote:

one of the Commissioners, was a member of the Board, and General Abendroth. He is the head of the National Guard. Then there were members—Tom McCloskey was there, who is Mr. McCloskey's nephew or son.

Mr. President, we know that if we are going to investigate this case, the only way we can get all the answers is by asking all the questions. The only way we can protect the innocent is to get all the facts. The only way we can clear up suspicion is to get all the facts. The only way we can make sure that people are guilty of the allegations made against them is to get all the facts from all the witnesses.

If that is to be done, it should be undertaken by the Government Operations Committee. Certainly, it should not be handed down to a committee with respect to which the Senate, on a yea-and-nay vote on July 24, refused by a vote of 50 to 33 to grant authority to continue the investigation.

Mr. President, I yield the floor.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961—CLOTURE MOTION

The Senate resumed the consideration of the bill (H.R. 11380) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes.

Mr. HART. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call may be rescinded.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. HART. Mr. President, in view of our heritage, it is not surprising that many of our democratic ideas and ideals, many of our institutions and with rare exception even our basic system of law represents in considerable part an adaptation of the ideas, ideals, the institutions and laws of England. Yet, in the late 18th century, our country had reason to believe that it should break the ties that bound it to England.

Many factors entered into that decision. This is not the occasion to discuss or elaborate on the multitude of such factors. Poor government, unrepresentative government was certainly one factor. We know that America in colonial days took fire from the slogan that: "Taxation without representation is tyranny." We know that while the seeds of democratic government had been planted in England, they were still in the embryonic stage; that England was controlled by the few. It had, as you will recall, a Parliament which was unrepresentative; property qualifications still determined the vote in many areas, and the failure to redistribute seats in accordance with the movement of population resulted in the development of "rotten boroughs," boroughs which had lost most of their population but retained most of their original representation, and "pocket boroughs," which were under the control of landed proprietors who frequently sold the right to represent the borough in Parliament.

In the Scottish constituency of Bute, only 1 of the 14,000 inhabitants had the right to vote—he was, I am told, elected to Parliament unanimously. We have heard of the constituency of Old Saram, which had no residents at all, and Dunwich which had sunk beneath the sea, but each of which was still represented in Parliament.

No complete or wholly accurate analogy can be drawn between the England of the 18th century and the State governments in our country today, but let us recall clearly that our Founding Fathers objected to the lack of representation accorded them; the lack of any adequate voice in the Parliament which in large part determined their fate; and that they rebelled against what they considered tyranny.

The English sought to abolish the "rotten borough" and the "pocket borough" in the Great Reform Act of 1832 which established for them the principle that representation must approximate population—and today redistricting there and in many other countries with a tradition of representative government is accomplished regularly and on a nonpartisan basis. But redistricting in this country is still a vexing problem.

Our forefathers were acutely conscious of the pernicious character of the "rotten borough" system and, by and large, tried to avoid it. The original constitutions of some 36 States provided that representation in both houses of the State legislature would be based completely, or predominantly, on population. The system of representation in the Federal Congress—which reflected the great compromise—was not to be the pattern or model for apportionment of seats in State legislatures. This is made clear by the fact that the Northwest Ordinance of 1787—adopted in the same year as the Federal Constitution—provided for the apportionment of seats in territorial legislatures solely on the basis of population.

"Rotten borough" politics during the past two decades however, has been both the hallmark and disgrace of many of our State Governments. The root of the problem, as we all know, has been the great population shift. In the last three-quarters of a century this country has changed from one that was two-thirds rural to one that is two-thirds urban and suburban. But while apportionment controversies are often viewed as urban-rural conflicts, this is not necessarily true. It is the fast-growing suburban areas which are probably the most seriously underrepresented in many of our State legislatures. We should recognize that, while the current thrust of malapportionment may result in underrepresentation of urban and suburban areas, in earlier times cities were, in fact, overrepresented in a number of States. Malapportionment or the "rotten borough" system can and historically has gone in a variety of directions. The point is that whatever its direction, it is wrong.

The problem we face today is the population shift which has not been reflected in the legislatures that govern most of the States. In some instances State constitutional provisions froze apportionments; in others there was simply a refusal to redistrict. As a consequence, the legislatures in too many States have become less and less representative of the people. By the 1960's the situation was so bad that in one State—Florida—that less than 15 percent of the people chose a majority of the members of both houses

of the State legislature and, although this is a particularly bad example, it is but one of many that could be cited. In any number of States one-third or less, of the voters effectively control the legislature.

The statistics of malapportionment are well known and need not be repeated here. They are in the RECORD. What is not so well known—what is often ignored or studiously avoided—are some of the effects on State government. Mass migration has developed metropolitan complexes with profound social and economic problems. The mayors of some of our principal cities have pointed out again and again that underrepresentation in the State legislatures has worked a hardship on their communities both in terms of State taxes and State expenditures. It would appear that we have come full circle and again have taxation without adequate representation and—though muted in the Federal-State context—that is still tyranny.

Domination of State legislatures by the few has prevented a sympathetic understanding at the State level of the problems of the urban and suburban citizens and their communities. On their own initiative the legislatures have been unable or unwilling to make serious attempts to solve these problems. Their magnitude has increased to such an extent—Luther Gulick as quoted in the New Republic, April 23, 1962—that one student of metropolitan affairs has predicted that "these amorphous urban complexes will soon be unfit for human occupancy." And now we find these communities in self-defense against the State's indifference and, in recognition of their limited means, necessarily and with increasing frequency are bypassing the State governments and appealing directly to Washington for aid. Although this may be necessary in some cases, the multiplication of Nation-local relations tends to weaken the State's proper control of its own policies and its authority over its own political subdivisions.

The Commission on Intergovernmental Relations has observed that:

> The more the role of the States in our system is emphasized, the more important it is that the State legislatures be reasonably representative of all the people.

It is somewhat ironic—but it seems to me to be true—that those who are most often critical of the drift of power and "decisionmaking" to Washington are the very ones who would frustrate the effectiveness of State governments.

Regardless of how desirable, how necessary, and pressing apportionment "reasonably representative of the people" had become, the unfortunate truth is that the problem was for all practical purposes insoluble without substantial intervention by the Federal judiciary. Many State legislators had such a fixed interest in the status quo that they were unwilling to apportion to achieve the end of representative government.

The fight for fair representation in State legislatures—the fight to end the "rotten borough" system—reached a turning point in March of 1962, when the Supreme Court handed down its decision in *Baker* v. *Carr* (369 U.S. 186). The Court there held that a claim asserted under the equal protection clause—challenging the constitutionality of a State's apportionment on the ground that the right of certain citizens to vote—was effectively impaired since in fact it was debased and diluted—presented a justiciable controversy subject to adjudication by the Federal courts.

While Baker against Carr represented a new step, it would seem that it was an inevitable step—to cope with a serious problem of long standing.

That the Constitution protects the right of all qualified citizens to vote at State as well as Federal elections, is hardly a startling proposition. A long and consistent line of decisions by the Court in cases involving attempts to deny or restrict the right of suffrage had made this indelibly clear. It had been repeatedly recognized that all qualified voters have a constitutionally protected right to vote—*Ex Parte Yarborough*, 110 U.S. 651. Fifty years ago the Court in *United States* v. *Mosely*, 238 U.S. 383, said:

> It is as equally unquestionable that the right to have one's vote counted is as open to protection * * * as the right to put one's ballott in a box (286 U.S. at 386).

And many years before Baker against Carr, the Court had held that the right to vote could not be denied outright—*Guinn* v. *United States*, 238 U.S. 347, *Lane* v. *Wilson*, 307 U.S. 268—that it could not be destroyed by alteration of ballots nor diluted by ballot box stuffing—*United States* v. *Classic*, 313 U.S. 299, 315; *Ex Parte Siebold*, 100 U.S. 371; *United States* v. *Saylor*, 322 U.S. 385. The Court in United States against Classic said:

> Obviously, included within the right to choose, secured by the Constitution, is the right of qualified voters within a State to cast their ballots and have them counted (313 U.S. at 315).

Racially based gerrymandering and the conducting of white primaries, both of which result in denying to some citizens their right to vote, had already been held constitutionally unpermissive—*Gomelion* v. *Lightfoot*, 364 U.S. 339; *Nixon* v. *Herndon*, 273 U.S. 536; *Nixon* v. *Condon*, 286 U.S. 73; *Smith* v. *Allright*, 321 U.S. 649; *Terry* v. *Adams*, 345 U.S. 461.

The right to vote freely for the candidate of one's choice is the very essence of a democratic society and any restrictions on that right strike at the core of representative government. It is equally obvious that the right of suffrage can be denied by a debasement, dilution, or depreciation of the weight of a particular citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

While Baker against Carr was concerned only with the situation in the single State of Tennessee, it served to focus attention on the problem of apportionment. Certainly, we were all aware that it was not confined to the State of Tennessee. Many of us knew of its existence in our own States. But except for students of political science, few realized the full extent of the problem. Its real magnitude was demonstrated by the fact that within 9 months of the decision litigation challenging the constitutionality of State legislative apportionment schemes had been instituted in at least 34 States.

In Baker against Carr, the Court with commendable restraint did not venture beyond the needs of the case before it. It did not state any views as to the proper constitutional standards for evaluating the validity of a State legislative apportionment scheme, or give consideration to the question of an appropriate remedy. It remanded the case with the observation that the district court would be able to fashion relief if violations of constitutional rights were found.

In the several opinions entered in the case, reference was made to "invidious discrimination" and to the need for at least a minimum standard of rationality, but the Court laid down no substantive standard. It appeared inevitable, however, that at some point a substantive standard of equal protection would have to be stated, for otherwise many malapportionment problems would be unaffected and indeed might be aggravated.

As one student—Professor Bickel—observed, a minimum rationality standard would in all probability ultimately lead the Court to uphold many apportionments containing gross population disparities. To declare these apportionments consistent with constitutional principles would be a mistake. It would endow with the Court's prestige and moral authority many malapportionments. In other words, it would entail approval by the Court of a principle that permits gross deviations from the population principle if they reflected some rational policy. The effect of such legitimization would be to generate consent for, or approval of, many existing expedient arrangements which, although not unconstitutional under a minimum rationality test, are nevertheless greatly responsible for the problems of urban decay. Some argued that the Court should not declare such apportionments constitutional but should stay its hand and allow them to continue. This is strange reasoning and the Court had a duty which it did not shirk.

As the Chief Justice pointed out in his decision in Reynolds against Sims:

> We are told that the matter of apportionment representation in a State legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: A denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us.

Squarely facing the problem, therefore, in Reynolds against Sims and the companion cases decided in June of this year, the Court enunciated the basic principle of "one man, one vote" and held that the legislatures of our States must be apportioned according to population. The Court could do nothing less, for there is no justification in our democratic heritage in logic, or the

practical requirements of government for choosing any other course. In its rulings the Court merely upheld the fundamental principle of our democracy. The Court did not, however, bog down in any mathematical quagmire. Basically and fundamentally, it provided a set of principles upon which any proper system of legislative apportionment must be constructed. It did not proclaim mathematical nicety or mathematical exactness. It did not proclaim reapportionment on a day-to-day, or year-to-year basis. It suggested great latitude in the carrying out of the fundamental principle that one man's vote was entitled to the same weight as another's.

The purpose of legislative representation in a democratic system of government is just that—to represent. The legislature acts on behalf of the voters. The proper goal of a system of apportionment must be, therefore, to provide effective representation for the body politic. The very history of democratic institutions points compellingly in the direction of population as the only legitimate basis of representation.

The first parliamentary institutions reflected their feudal origins. Social, economic, and political power were in the hands of the few. Government as such had only a marginal effect on the lives of most of the people and in those circumstances it was natural that parliaments should represent not people but great estates, wealth or possibly great geographic strongholds. When feudal concepts of privilege and position began to disappear, political responsibility spread to the whole of the population and that responsibility under our accepted democratic theory falls today on every citizen.

In an increasingly complex and industrialized society, government becomes vastly more important to the individual and impinges more heavily on his life. It is no longer tolerable for a House of Lords to exercise real legislative power over a people with no voice in it. It is equally apparent that as transportation and communications are revolutionized, the logic of separate representation for geographical strongholds disappears. In this year of 1964, there is no basis for representation in State legislatures other than population.

Proposals have been made for area representation but when a thinly settled area is given as many representatives as one more populous, it simply means that the people in the thinly settled areas have more representation. As the Chief Justice observed in Reynolds against Sims:

> Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.

As long as ours is a representative form of government and our legislators are those instruments of government elected by and directly representative of the people, the right to elect legislators in a free and unencumbered fashion is the bedrock of our political system.

The Chief Justice also observed that it would appear extraordinary and shocking to suggest that a State could constitutionally be permitted to enact a law to provide that certain of the citizens could vote 2, 5, or 10 times for their legislative representatives while voters living elsewhere and simply because of the accident of geography could vote only once. Yet it is true that State legislative districting schemes which provide the same number of representatives to unequal numbers of constituents produce this very effect.

Any candid statement of a nonpopulation theory of representation must rest on one of two possible propositions: Either it rests on the premise that the residents of thinly populated areas are more virtuous than other Americans and accordingly deserve more representation; or, on the premise that the residents of the sparsely populated areas have special needs which only can be met by giving them greater representation than that afforded others.

I doubt that any Member of this body seriously would advance the proposition that certain of their constituents, identified only by means of geography, are so much more honest and intelligent than other constituents that each should have 2 or 3 or 10 votes. Such a proposition is manifestly untenable.

The second possible premise, that is, that certain classes of citizens have special problems that justify giving them more proportionate power in the legislature, likewise do not stand up. This contention has indeed been advanced on behalf of some of the more sparsely populated areas which are now so generally overrepresented in State legislature. We are told that the people in these areas represent a minority; that they do have special needs and that these needs would be neglected in a legislature faithfully representing the State's population as a whole. However, it is equally obvious that the problems of cities and suburbs and their need for effective government have been as great as those of rural areas in recent times. No one, however, has been heard to argue that these urban and suburban areas should, therefore, be given disproportionate weight in the legislature.

In our system habitually we protect minority groups by means other than giving them majority control of legislatures. The claim that legislative control is needed by the minority can lead to some surprising and absurd results. In one State, for example, represented with distinction by the present occupant of the chair [Mr. BREWSTER] the rural counties which contain less than 15 percent of the State's population can elect a majority of the members of the State senate. On the other hand, Negroes are a slightly larger minority in this very same State, making up almost 17 percent of the State's population. If we were to pursue the logic of the proposition—of a minority with special needs argument—to its ultimate absurdity, it should follow that Negroes are entitled to elect a majority in one house of that State's legislature. But legislative control is not our method of protecting minority rights and logic decrees that it cannot be.

As a result of the decisions of the Supreme Court, which in substance and effect would outlaw or curtail the "rotten borough" system that infects so many of our States, we find ourselves face to face with a countermove designed to destroy, deflect and ultimately defeat this basic democratic proposition. This is a countermove for more "rotten borough" politics—a countermove for more taxation without representation—a countermove for more tyranny—the tyranny of the few over the many.

An informed, an enlightened electorate would, I believe, reject these machinations out of hand. But to forestall considered, calm, objective appraisal of these maneuvers, we find ourselves confronted in the closing days of this session of Congress with a proposed amendment to the foreign aid bill. This is an important measure having nothing to do with State apportionment schemes—a measure that should be considered on its own merits and wholly apart from the problem of apportionment—but before consideration can be given to this bill, we are told we must concur in and be subservient to a continuation of "rotten borough" politics.

Of great concern to me and quite apart from the merits—or lack of merits—in the basic argument over apportionment is the attempt that is being made to subvert the position of the Supreme Court in our system of government.

None of us are unmindful of the fact that there has been introduced in the House a bill which provides in substance that the Supreme Court "shall not have the right to review the action of a Federal court or a State court" in any matter relating to the apportionment of a State legislature and that the Federal district courts shall not have jurisdiction to entertain a complaint on apportionment.

In this body the attempts at abortion take a somewhat different tack in that we find the proposal to continue "rotten borough" politics coming as an amendment of the foreign aid bill. This proposal, while not as drastic as that entertained by the House, would require the Federal courts, except in "highly unusual circumstances" to stay all reapportionment proceedings until January 1, 1966. Lest there be any doubt about the seriousness of this proposal, the implications inherent in it are as drastic and deadly as those in the more forthright proposal passed by the House. Both of these proposals in essence would accomplish their objective of continuing "rotten borough" political systems by withdrawing jurisdiction from the courts. It has been rightly observed that this device is one of the oldest tools of tyrants. If it were successful in this instance, it would mean the end of our constitutional system providing for judicial review and, therefore, in reality an end to our Constitution. We must fully appreciate that to adopt the course suggested would establish a precedent—it would make it irresistibly easy for an inflamed majority of Congress at any given time to remove one category of cases after another from the reach of the courts. We are all aware of the fact that public opinion often becomes

aroused against decisions of the Supreme Court for short periods of time.

We are equally well aware of how dangerous such an easy procedure of nullification would be. I seriously doubt, for my own part, that this body has the constitutional power to suspend enforcement of constitutional rights; yet the thrust of these proposals is in that very direction. It seems clear to me that we could not withdraw the constitutional right to counsel until after conviction, or circumscribe the right to free speech and assembly. The proposal placed before this body is advanced on the untenable proposition that the decisions of the Court have produced a chaotic condition. This is manifestly incorrect. Those decisions do require adjustments in State legislatures and obviously this is not a simple matter. But they do not require the impossible—they do recognize the need for a period of adjustment where that can be shown as a necessary concomitant. The postponement of constitutional rights has been recognized by the Court as a necessary accommodation for administrative necessity, which is to be geared to the needs of each specific case.

The proposition advanced in this Senate is a blanket suspension not related to the needs of the particular case. It is quite obvious that it has but one objective, and that is to bide time for the passage of a constitutional amendment—a constitutional amendment which would, it is hoped, be passed on by the very "rotten borough" system that it seeks to sustain.

We are told that these proposals are bottomed on article 3 of the Constitution which provides:

> The Supreme Court shall have appellate jurisdiction * * * with such exceptions, and under such regulations as the Congress shall make.

The proponents claim that this provision authorizing the Congress to regulate the appellate jurisdiction of the Supreme Court is to be interpreted as overriding and in effect nullifying the whole of the judicial power which is outlined in article 3 read in its entirety. I suggest that the generality of this proviso relative to appellate jurisdiction is not wholly definitive and absolute; that it must be weighed in relation to other grants of power and to the purposes and provisions of the Constitution as a whole. This proviso, I believe, is subordinate to the basic affirmation, the basic grant of power found in the first sentence of both sections 1 and 2 of article 3, that:

> The judicial power of the United States shall be vested in one supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish; and this judicial power is to extend to all cases, in law and equity, arising under this Constitution.

Bearing in mind our tripartite system with its delegation of duties, rights, and responsibilities to the legislative, executive, and judicial bodies, we find that this "judicial power shall extend to all cases arising under this Constitution." This single sentence backed with the full force of our constitutional history, would indicate—in fact, I believe would compel—the conclusion that Congress cannot remove by its fiat one particularly disfavored category of constitutional claims from the reach of the courts. A principal reason for having an independent Federal judiciary is to uphold the constitutional guarantees in all of those cases in which its construction is necessary to a decision of the case. If this is not true, then the Court exists merely at the sufferance of the Congress. The maneuver suggested now ignores the fundamental principles that are involved in the separation of powers outlined in our Constitution. If Congress can withdraw this constitutional right from the safeguard of the Court, why not every and all such rights?

No extended legal argument is either necessary or desirable, but I suggest that neither history, precedent, nor logic support the proposition that the exception clause can be used by the Congress to abrogate all judicial power to protect any one basic constitutional right. I am aware that the case of ex parte McCardle has been cited as supporting the position of the proponents. Nevertheless, I feel this case on analysis will not support this radical departure from constitutional history and tradition. The McCardle case has been interpreted by some as standing for the proposition that the Congress has unlimited power to withdraw jurisdiction from the Federal courts in all cases involving constitutional rights. In reality, the decision does no such thing. The case has been analyzed time and time again by students of constitutional government. It seems unnecessary for me at this point to reexamine the many analyses that have been made. The distinguished senior Senator from New York [Mr. JAVITS] ably contrasted the McCardle case with *U.S.* v. *Klein,* 13 Wall. 128, cited with approval as recently as 1962 in *Glidden* v. *Zdanok,* 370 U.S. 530. Those interested should read each of these decisions and then read the comments of Senator JAVITS at 19204–19206 of the RECORD.

I believe it is more important at this point to emphasize that the decision in the McCardle case was a very limited one and represents dubious authority for the maneuvering that is now proposed to this body. The opinion certainly minimally represents a departure from our constitutional heritage and it is not without significance that this case—an aftermath of the highly inflamed opinion prevalent in the Civil War period—has no counterpart. In other words there has never been a similar effort to curb the Supreme Court's jurisdiction over comparable constitutional rights between that time and today by the deceptively simple expedient of curbing its jurisdiction. If the Congress can accomplish this, it can amend the Constitution—it can do away with rights guaranteed by the Constitution—by the simple expedient of a statute denying the jurisdiction of the Supreme Court. This is a monstrous suggestion that I trust the people will ultimately reject out of hand. In my view we have not as yet achieved that omnipotence, that perspicacity, that judgment or total understanding so that the people will leave in our hands completely unchecked and unfettered their fundamental rights. The procedure suggested must of necessity be bottomed on a contrary premise.

It would seem to me apparent that the proposals now made are wrong in principle, that they are wrong as constitutional law, and that they are wrong as a procedure for considering changes in our constitutional law.

There is a method for changing our Constitution, and if the people of this country, after being fully advised in the premises, desire a change, that can be accomplished. But we are confronted now with a hasty, and I think, ill-conceived, maneuver to defeat, deflect, or destroy rights now guaranteed by our present Constitution. If these are to be changed, if we are not to have the right of representative government in our State legislatures, then this should be done in the orderly process of constitutional amendment, and not through the hasty and ill-considered action that characterizes the present proposals before the House and the Senate. And let us be certain the constitutional change is not presented to and made by the unconstitutionally organized legislatures, which is exactly why the proponents of the amendment seek to "buy time."

We know that there has been no opportunity for open discussion or proper expression of public opinion. While it will be argued that these proposals are necessary in order to maintain the status quo, this argument is without real merit for nothing can be done by the courts now that cannot be undone by constitutional amendment, if the people after being informed are of the opinion that State legislatures should be unrepresentative of the population. But again, do not put to the unrepresentative legislatures the question of whether they should be "made constitutional."

While I cannot at the present time appreciate the arguments for a continuation of the "rotton borough" system, I feel that basically it presents a question to be decided by the people—not a few people—not the ones who have an ax to grind—or a status or position to maintain—but all of the people. Putting that aside for the moment, however, I am much more concerned with the proposition now advanced that the Supreme Court's power to decide constitutional issues can be abrogated by a majority vote in the Congress; that our long-recognized method of amendment is to be circumvented and set to naught. To me, this strikes at the very heart of our constitutional form of government and must be rejected. Few of us, no matter what our length of service in the Senate, will face a more fundamental question than the one now pending.

Mr. President, I hope that when the roll is called tomorrow on the proposal that debate be closed on the basic question, overwhelmingly we shall say "no," and then, given an opportunity to carefully study the implications of the proposal as offered by the distinguished junior Senator from Illinois [Mr. DIRKSEN], we shall, when that roll is called, overwhelmingly reject that, too.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. HART. I yield.

Mr. DOUGLAS. I have listened with both interest and admiration to the very scholarly and logical address of the Senator from Michigan. He has developed his argument with precision, and with complete absence of passion—although there is emotion underneath—and with admirable restraint. Every sentence is packed with meaning, and the constitutional argument which he has made is profound.

The Senator has served as Lieutenant Governor of the State of Michigan. In that capacity I believe he presided over the Michigan Senate. In that correct?

Mr. HART. The Senator is correct. That was a privilege which was given me for 4 years.

Mr. DOUGLAS. I wonder if the Senator from Michigan would describe the method by which members of the Michigan Senate were elected during the period in which he was its presiding officer.

Mr. HART. I was about to say that the representation in the 32 senatorial districts, which at that time comprised the State senate, was as unbalanced as one could imagine. However, that is not true. I realize now that there were States in which the imbalance was even greater. One member of the State senate carried, in effect, about 15 times the power of a colleague who sat probably not more than one chair away from him.

The senior Senator from Illinois [Mr. DOUGLAS] has discussed, in the 28 hours or so that Senators have been permitted to speak on the amendment, a scholarly analysis, which was printed in the Washington Post, and which was inserted in the CONGRESSIONAL RECORD.

There we saw a map of Michigan, which showed on the left side the composition prior to reapportionment and, on the right side, the new apportionment. What we are being told by the proponents of the amendment to be such a difficult problem, namely, bringing legislative districts into reasonable balance, did not prove to be so difficult in the case of Michigan, once the word was firmly established under the Supreme Court decision that it should be done.

Mr. DOUGLAS. In other words, would reapportionment have been carried through by the Michigan Legislature itself?

Mr. HART. The answer is "no," underlined and underscored.

Mr. DOUGLAS. Reapportionment only followed Baker against Carr, is that not correct?

Mr. HART. That is correct. Indeed, there was a flurry of legislative effort to reapportionment as a result of the new constitution, which was adopted in Michigan 2 years ago. Reapportionment was obtained. Lo and behold, when the Supreme Court, in the Reynolds case, finally rendered its decision, that reapportionment was found again to be faulty and violative of constitutional requirements.

Therefore I feel that while there are those who wring their hands today at what they describe as the intrusion of the Supreme Court into this thicket, the Supreme Court probably was as unhappy as anyone else at having to move into the thicket.

The finger of criticism should be pointed, not at the Supreme Court, but all across the country at State capitols, where for years legislators sat, unwilling to make adjustments which ultimately were required to be made as a result of the Supreme Court decision.

Mr. DOUGLAS. In many cases, that was in violation of the State constitutions, which required decennial apportionments according to population. Is that correct?

Mr. HART. That is correct. Why do the proponents now argue that such legislatures can be entrusted to pass judgment on the constiutional amendment if they were willing periodically to examine their constitutional obligations with respect to reapportionment and at the same time do nothing? Why are we now to assume that if they are asked, "Do you like the way you are composed," they will say, "No"?

Mr. DOUGLAS. Is it not a fact that as a practical matter, the unrepresentative character of the Michigan Legislature, and in particular of the Michigan Senate, prevented both a Democratic and a Republican Governor from placing in effect a revenue system which would relieve the State's financial difficulties?

Mr. HART. The Senator from Illinois states accurately what happened.

I am sure that when the history of the climactic, horrendous consequences which resulted from malapportionment is written, a chapter on this issue in Michigan will be included, even in a very short book on that subject. I am delighted that the senior Senator from Illinois is present, because I wish to make an admission to him. Earlier in my remarks, I discussed the rotten borough system. I must confess that I learned about this subject from the senior Senator from Illinois, who astounds all of us by the breadth of his knowledge and the detail and retentiveness of his mental index.

I have been amazed that when a Senator rises to discuss situations in his State, whether it be Rhode Island, Arizona, New Mexico, or any other State, the senior Senator from Illinois is able to identify cities and old figures in political history in those States. I say to the Senator from Illinois that my education in the rotten-borough system and its history was at his hands.

Mr. DOUGLAS. This is very pleasant, but I am sure the Senator from Michigan does not need any instruction from me, and that his long experience in the Michigan Senate and as a student of constitutional law abundantly prepared him for the great help which he has rendered in this struggle.

I express my personal indebtedness to him. I believe that although not many Senators have been in the Chamber to hear his address, it will be read in the RECORD tomorrow by many thousands of people, and will have a profound influence not only on the vote tomorrow, but on the subsequent proceedings before this body.

Again, I thank the Senator from Michigan.

Mr. HART. The kind remarks of the senior Senator from Illinois will be remembered by me a long time after they have been forgotten by others.

Mr. McNAMARA. Mr. President, I compliment my colleague from Michigan upon the thoughtful, well ordered presentation he has made on this vital subject. The constitutional authority which he has cited at such great length demonstrates his careful legal training. As the Senator from Illinois has said, the junior Senator from Michigan has made an outstanding contribution to the cause. Long after the vote tomorrow, his remarks will help those of us who are on the side of the Supreme Court in this case.

Mr. HART. I thank my colleague from Michigan.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. HART. I yield.

Mr. PROXMIRE. It was not possible for the Senator from Wisconsin to hear all of the speech delivered by the distinguished junior Senator from Michigan; but from what I heard and the opportunity I have had to learn about the speech, it was a remarkably comprehensive talk, which covers the entire scope of the issues, and covered them thoroughly.

I recommend to other Senators that if they want a concise, comprehensive argument, they can do no better than to read the excellent speech that has just been delivered by the distinguished Senator from Michigan, who is not only a leader in the fight to sustain the Supreme Court, but also is an eminent lawyer, a member of the Committee on the Judiciary, and a man who understands this issue, from a legal standpoint, as well as does any other Member of the Senate.

AMENDMENTS NOS. 1266 AND 1267

Mr. DOUGLAS. Mr. President, I submit two amendments to the Dirksen-Mansfield amendment. I ask that the reading of the amendments be dispensed with but that they be printed and be considered as amendments parliamentarily appropriate in the future discussion of the Dirksen-Mansfield amendment.

Mr. MILLER. Mr. President, reserving the right to object, I am sure that the Senator from Illinois does not intend to do anything contrary to the rules of the Senate. I am sure that he intends by this request that the amendments to the Dirksen-Mansfield amendment be not considered until after the vote on cloture.

Mr. DOUGLAS. Oh, no; but that they be considered as appropriate for consideration.

It is my understanding that amendments to the proposal upon which cloture is obtained can be acted upon only if they have been submitted prior to the vote on cloture.

The PRESIDING OFFICER (Mr. BREWSTER in the chair). The Senator is correct; except by unanimous consent. And these amendments would be considered subject to the limitation of the cloture rule. So, without objection, the unanimous-consent request is agreed to.

The amendments will be received, printed, and lie on the table; and, without objection, the amendments will be printed in the RECORD.

The amendments are as follows:

AMENDMENT No. 1266

On page 1, line 9, strike the word "shall" and insert in lieu thereof the word "may".

One page 1, line 10, strike the words "entry or".

On page 1, line 7, immediately after the word "action", insert the words "instituted after the date of enactment of this section".

On page 2, line 2, strike the period after word "interest" and insert a comma and add the words: "and consistent with the principles of the Constitution."

Beginning with line 3, page 2, strike out all, to and including line 16, page 2.

Redesignate succeeding subsection numbers accordingly.

AMENDMENT No. 1267

On page 2, line 2, strike the period after the word "interest" and insert a comma and add the words: "and consistent with the principles of the Constitution."

Beginning with line 3, page 2, strike out all, to and including line 16, page 2.

Redesignate succeeding subsection numbers accordingly.

AMENDMENTS NOS. 1268 AND 1269

Mr. McNAMARA. Mr. President, I submit two amendments that are in exactly the same category, and I may the same request as that made by the Senator from Illinois.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 1268 and 1269) were ordered to be printed and lie on the table, and to be printed in the RECORD, as follows:

AMENDMENT No. 1268

On page 1, line 9, strike out the word "shall" and insert in lieu thereof the word "may."

Beginning with line 10, page 1, strike out all, to and including line 16, page 2, and insert in lieu thereof the following: "execution of any order relating to the apportionment of membership in any house of the legislature of a State for such a period as will be in the public interest and consistent with the principles of the Constituion."

AMENDMENT No. 1269

On page 2, beginning with line 4, strike out all, to and including line 8, page 2.

On page 2, line 9, strike out "(ii)".

On page 2, line 10, strike out the words "in regular session".

On page 2, line 16, strike the words "of highly unusual circumstances." and add in lieu thereof the words "any inconsistencies with the principle of the Constitution."

Re designate succeeding subsection numbers accordingly.

AMENDMENTS NOS. 1270 AND 1271

Mr. HART. Mr. President, I submit two amendments and ask unanimous consent that they be considered as having been read, so as to comply with the requirements of the cloture rule.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 1270 and 1271) were ordered to lie on the table and to be printed, and ordered to be printed in the RECORD, as follows:

AMENDMENT No. 1270

Beginning with line 3, page 2, strike out all, to and including line 16, page 2.

On page 2, line 19, insert after the words "any party" the words "of interest".

On page 2, line 21, strike the words "without other authority" and insert in lieu thereof the words "by permission of the court of the United States having jurisdiction of the matter."

Redesignate succeeding subsection numbers accordingly.

AMENDMENT No. 1271

On page 1, line 9, strike the word "shall" and insert in lieu thereof the word "may".

Beginning with the dash in line 3, page 2, strike out all, to and including the clause designation "(ii)" in line 9, page 2.

On page 2, line 10, strike out the words "in regular session."

Mr. MILLER. Mr. President, in connection with the debate on reapportionment, I ask unanimous consent to have printed at this point in the RECORD an extract from a portion of my recent newsletter on the subject "Reapportionment," which was published shortly before the Democratic National Convention in New Jersey. I make this request with a view to doing what I can to assist in understanding of the precise issues facing the Senate.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

REAPPORTIONMENT

(By U.S. Senator JACK MILLER)

Widespread comment followed the recent decision of the U.S. Supreme Court in *Reynolds* v. *Sims* that, under the equal-protection clause of the 14th amendment to the Constitution, both houses of a bicameral State legislature must be apportioned as nearly as practicable on a population basis. But when the Court then applied this principle in declaring unconstitutional the apportionment of the Colorado Legislature in *Lucas* v. *Colorado General Assembly,* many Members of Congress felt the Court went too far. The reason was that two separate plans of reapportionment had been submitted to a general referendum of the people of Colorado: one plan placed both houses on a population basis; the other placed one house on population and the other house on population and area. A majority of the people voted for the latter.

Resolutions calling for a constitutional amendment on this subject have been introduced in both the House and Senate. I am a cosponsor of the one which seems to have the greatest support—at least in the Senate. It is a bipartisan proposal to amend the Constitution to provide that (a) the membership of at least one house of a bicameral legislature shall be apportioned as nearly on a population basis as possible; and (b) the people of a State shall have exclusive power to determine the makeup of the other house. There are many who believe that to have a check-and-balance legislative system, other factors than population should govern the composition of the second house. It isn't just a case of representing "acres." Economic interests which are vital to a State and its people—such as agricultural land, mineral deposits, recreational areas, industrial sections—are not necessarily accompanied by a large resident population. It would seem that the people of a State should have the right to take such factors into account, if they wished, in establishing a check-and-balance legislative system.

Congress has recessed for the National Democratic Convention, and there will be so much pressure for final adjournment when we return afterwards that it is unlikely that action can be taken on a constitutional amendment. However, it is hoped that such action can be taken early next year so that the numerous State legislatures which will be meeting in 1965 will have an opportunity to consider ratification of the amendment (three-fourths of all States must ratify). Granted that many of these legislatures will be malapportioned, it would be a question of ratifying a constitutional amendment to let the people decide the composition of the second house, so it can hardly be maintained that the legislators would be ratifying an amendment which would perpetuate themselves in office. Meanwhile, almost every State is involved with Federal court litigation over reapportioning their legislatures; and there has been no uniformity among the Federal courts regarding the time of such action (one court directed a State to reapportion itself within 15 days). Accordingly, after much bipartisan work and consultation with the Department of Justice, the Senate leaders (DIRKSEN and MANSFIELD) have offered an amendment under which the Governor, attorney general, or any member of the legislature may obtain a stay of Federal court proceedings "to allow the legislature of such State a reasonable opportunity in regular session or the people by constitutional amendment a reasonable opportunity to apportion representation in accordance with the Constitution." What would constitute "a reasonable opportunity" would be for the Court to decide; and if the State fails to apportion representation in accordance with the Constitution within the time allowed by the Court, the Court would do the apportioning. Of course, if the resolution calling for a constitutional amendment is ratified in the meantime (leaving it to the people to decide the composition of the second house) reapportionment of the second house would be left to the people rather than a court. In my judgment, the Dirksen-Mansfield amendment would not affect the interim plan under which our legislature will be operating next year. Action on the amendment will come after the Democratic Convention.

Thus far, a few so-called ultraliberal Members of the Senate have been filibustering the Dirksen-Mansfield amendment. However, Walter Lippmann, one of the columnists most favored by this group, recently said of the amendment: "It seems to me sound and in the end desirable."

Before recessing, the House passed the Tuck bill, which would deny the Federal courts jurisdiction over any reapportionment matter. Such action would prevent the courts from deciding whether the equal-protection clause of the 14th amendment to the Constitution was being violated because of an apportionment situation. I doubt that the bill will be acted on favorably by the Senate, but it could result in favorable action on the Dirksen-Mansfield amendment and also on the constitutional amendment leaving it to the people to decide the composition of the second house.

THIS IS THE YEAR OF THE CARPETBAGGER

Mr. MILLER. Mr. President, much has been said and will be said in the coming months of a new development on the American political scene this year—the advent of the carpetbagger.

I venture to say that 1964 will go down in history as the year of the carpetbagger, a year in which the laws or traditions of States were ignored, in order to seek victory in the political arena.

If this attitude should catch on and others seek to do the same thing in the years to come, it could very well establish a trend in which the traditional relationship between the State and its representatives in Congress will become a thing of the past.